

**Notice of Allowability**

Application No.

10/726,806

Examiner

Jerry Martin Blevins

Applicant(s)

JAMES ET AL.

Art Unit

2883

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed February 27, 2007.
2. ☒ The allowed claim(s) is/are 17-24 and 26-29.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 02/27/2007 12/03/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 27, 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments, see page 6, filed February 27, 2007, with respect to the Preliminary Amendment to the Specification have been fully considered and are persuasive. The amendment has accordingly been entered.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on February 27, 2007 was filed after the mailing date of the Notice of Allowance on December 13, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Allowable Subject Matter***

Claims 17-24 and 26-29 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding claim 17, the prior art, as best exemplified by US 6,138,046 to Dalton, discloses a method of forming a medical device comprising the steps of: providing an optical fiber core having a proximal end and a distal face; associating the proximal end of the core with an optical connector; enclosing the fiber core in a continuous, uninterrupted sleeve, wherein the sleeve has a length at least substantially the length of the optical fiber core extending from the optical connector to at least the distal face of the optical fiber core (Figure 1, column 8, lines 28-38 and column 9, lines 61-67). Dalton also teaches forming a tip in the sleeve, the tip being disposed distal of the distal face of the optical fiber core (column 13, line 7 – column 14, line 18). However, Dalton does not teach that the tip is closed. Furthermore, Dalton, either alone or in combination with the prior art, fails to disclose or render obvious the combination of the above limitations with a closed tip.

Claims 19-23 are allowed due to dependence from claim 17.

Regarding claim 18, the prior art, as best exemplified by Dalton, discloses a method of forming a medical device comprising the steps of: providing an optical fiber core having a proximal end and a distal face; associating the proximal end of the core with an optical connector; enclosing the fiber core in a continuous, uninterrupted sleeve, wherein the sleeve has a length at least substantially the length of the optical fiber core extending from the optical connector to at least the distal face of the optical fiber core

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(Figure 1, column 8, lines 28-38 and column 9, lines 61-67). However, Dalton does not teach an optical coupling layer. Furthermore, Dalton, either alone or in combination with the prior art, fails to disclose or render obvious the combination of the above limitations with an optical coupling layer intermediate a portion of the sleeve and a distal portion of the optical fiber core.

Regarding claim 24, the prior art, as best exemplified by US 6,315,775 to Thielen, discloses a method of making a device comprising the steps of: exposing a distal portion of an optical fiber; providing an optical coupling layer intermediate the distal portion of the optical fiber core and the sleeve; and forming a closed, tissue penetrating tip disposed distal of the distal portion of the fiber core (abstract, column 2, lines 43-45 and 64-66, column 3, lines 25-27, and Figure 1). However, Thielen does not teach that the penetrating tip is in the sleeve. Furthermore, Thielen, alone or in combination with the prior art, fails to disclose or render obvious the combination of the above limitations with a penetrating tip located in the sleeve.

Claims 26-29 are allowed based on dependence from claim 24.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

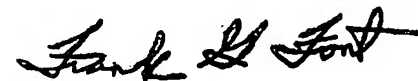
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Martin Blevins whose telephone number is 571-272-8581. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on 571-272-2415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMB



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